

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA, <i>Plaintiff</i>	§	
	§	
v.	§	
	§	Case Nos. 1:14-CR-359-LY
CLAYTON ERIC CLAFLIN, <i>Defendant</i>	§	1:20-CR-159-LY
	§	

ORDER

The Court hereby **SETS ASIDE** the Court's Order of September 16, 2021 (Dkt. 125 in Case No. 1:14-CR-359-LY; Dkt. 66 in Case No. 1:20-CR-159-LY) and enters the following Order.

Now before the Court is Defendant Clayton Eric Claflin's Unopposed Motion to Withdraw from Appeal and Request for Appointment of New Counsel, filed September 1, 2021 in Case No. 1:20-CR-159-LY (Dkt. 64) and September 14, 2021 in Case No. 1:14-CR-359-LY (Dkt. 123). The District Court referred the motions to the undersigned Magistrate Judge for resolution on September 14, 2021. Dkt. 65; Dkt. 125.

In Case No. 1:14-CR-359-LY, Defendant was convicted of Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. § 922(g)(1), and sentenced to time served, followed by a three-year term of supervised release. Dkt. 91. A petition to revoke Defendant's supervised release was issued March 9, 2020, and remains pending. Dkt. 94.

In Case No. 1:20-cr-159-LY, Defendant is charged with Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. § 922(g)(1). Dkt. 15. On April 1, 2021, the Court found that Defendant is not mentally competent to stand trial at the present time and entered an Order of Temporary Commitment. Dkt. 34. Defendant filed a Notice of Appeal of that order to the United

States Court of Appeals for the Fifth Circuit on April 9, 2021. Dkt. 35; *United States of America v. Clayton Eric Claflin*, No. 21-50302 (5th Cir. Apr. 9, 2021).

Defendant's attorney, Keith T. Lauerman, now asks that he be permitted to withdraw from the interlocutory appeal and that Defendant be appointed new appellate counsel. The United States Attorney Appellate Division does not oppose the motion.

The undersigned finds that this Court lacks jurisdiction to act on counsel's request. Defendant's interlocutory appeal remains pending before the Fifth Circuit Court of Appeals, which issued an order on August 26, 2021 denying Mr. Lauerman's motion to that Court to withdraw and appoint new counsel. Dkt. 64-1 in Case No. 1:20-CR-159-LY. "An appeal divests the district court of its jurisdiction 'over those aspects of the case involved in the appeal.'" *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982)). Thus, in a criminal case, an effective notice of appeal divests the district court of jurisdiction. *United States v. Bolton*, 908 F.3d 75, 101 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 47 (2019); *United States v. Lucero*, 755 F. App'x 384, 387 (5th Cir. 2018).

For these reasons, Defendant's Unopposed Motion to Withdraw from Appeal and Request for Appointment of New Counsel (Dkt. 123 in Case No. 1:14-CR-359-LY; Dkt. 74 in Case No. 1:20-CR-159-LY) is hereby **DENIED**.

SIGNED on September 17, 2021.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE